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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,295	12/31/2003	Peiguang Zhou	19924	9196
23556	7590	02/24/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			SPERTY, ARDEN B	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 02/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/750,295

Applicant(s)

ZHOU ET AL

Examiner

Arden B. Sperty

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 26-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>several</u> .                                                             | 6) <input type="checkbox"/> Other: _____                                    |

### **NON-FINAL OFFICE ACTION**

1. Applicant's election of claims 1-25 in the reply filed on 12/06/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

#### ***Claim Objections***

2. Claim 22 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 22 is redundant.

#### ***Claim Rejections - 35 USC § 112***

3. The "relatively short" open time in claim 1 is a relative limitation which renders the claim indefinite. The term "relatively short" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

4. Claims 1 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "Meltblown" is generally a process term, in other

words functioning as an adjective. Use of the term as a noun is unclear. Suggested language includes "a meltblown layer."

5. Claim 14 is indefinite because the orientation of layers is unclear. Where is the meltblown layer of claim 1, if the meltblown nonblocking agent of claim 14 is on one side of the elastic layer, and the adhesive and facing are on the other side of the elastic layer? Given the broadest interpretation, the nonblocking agent of claim 14 may be in or between any layers, as long as it is on the opposite side of the elastic layer from the meltblown layer or material of claim 1.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5635290 to Stopper et al.

8. The reference teaches a nonwoven composite comprising at least one layer of a nonwoven fiber web bonded to at least one layer of an elastic material (col. 3, lines 46-55). The nonwoven layer is analogous to the claimed facing layer. The elastic material may comprise strands of elastomeric filaments (col. 8, lines 6-23), and is analogous to the claimed elastic layer. The nonwoven web may be adhesively bonded to the elastic layer (col. 8, lines 59-62; col. 9, line 66- col. 10, line 6). The reference is not concerned

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with the open time property of the adhesive. However, it would have been obvious to one of ordinary skill in the art to determine the workable open time range(s) based on the intended use of the product, and the subsequent processing steps. Absent a showing of unexpected results, the properties of claims 6-8 do not provide patentable distinction over the prior art. Thus, claims 1, 6-8, 22 and 24 are rejected.

9. Claim 2 refers to a property of a *rolled* laminate product, rather than the claimed intermediate laminate. Claims 3-5 are also directed to properties of a product which is not claimed. A "roll" is not positively recited; only an elastic laminate is positively recited. As such, the properties of the rolled laminate are not given patentable weight at this time.

10. Regarding claims 9-12, the reference is not concerned with the amount of adhesive employed. An optimal amount of adhesive would have been easily determined by one of ordinary skill in the art. *In re Aller*, 105 USPQ 233 (CCPA 1955).

11. Regarding claim 13, the reference is silent with respect to the composition of the adhesive. However, the reference recites materials intended for the nonwoven layer, and the elastic layer, and it would have been obvious to one of ordinary skill in the art to select a compatible adhesive. The examples specifically recite polyolefin layers. Absent a showing of unexpected results, polypropylene-based adhesives are well-known as compatible with the materials of the nonwoven and elastic layers, and thus would have been within the ordinary level of skill of a worker in the art. This position finds support in *In re Leshin*, 125 USPQ 416, whereby it has been held to be within the ordinary level of

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skill of a worker in the art to select known materials based on their suitability for the intended use.

12. Regarding claim 14, the reference teaches strands of elastic filaments or elastic strips arranged in a planar space-apart fashion, employed as the elastic layer (col. 8, lines 13-16). Upon the elastic layer, meltblown fibers are deposited. The meltblown fibers are analogous to the claimed meltblown nonblocking agent.

13. Regarding claims 15-18, it would have been obvious, and necessary, for one of ordinary skill in the art to determine the amount of meltblown fibers, dependent upon the ultimate intended use of the product and the properties desired therein. *In re Aller*, 105 USPQ 233 (CCPA 1955). Regarding claim 19, the reference teaches that a compatible polymer is intended (col. 8, lines 13-22). Given the materials recited for the nonwoven and elastic layers, it follows that a compatible material includes polyolefins. This position finds support in *In re Leshin*, 125 USPQ 416, whereby it has been held to be within the ordinary level of skill of a worker in the art to select known materials based on their suitability for the intended use. The reference does not require tackifiers. Unless a tackifier is recited by the reference, it is presumed that one is not inherent.

14. Regarding claims 20-21, the reference intends for the thickness to be optimized by the practitioner (col. 8, lines 23-47). Optimizing such variables requires only routine skill in the art, and thus would have been obvious to one of ordinary skill, as held in *In re Boesch*, 205 USPQ 215 (CCPA 1980). As basis weight relates to thickness and density, corresponding basis weights would have been obvious to one of ordinary skill in the art.

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15. Regarding claim 23, the nonwoven materials meet the claimed basis weight (col. 4, lines 1-14).

16. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5635290 to Stopper, as applied to claim 1 above, and further in view of US Publication 20030091807 to Desai et al.

17. The Stopper reference teaches materials used in a variety of applications, including outer covers of training pants, diapers, incontinence products, environmental and hospital protective garments, and surgical drapes (col. 10, lines 36-45; col. 3, lines 55-65). The reference teaches a gathered nonwoven layer, which is analogous to the claimed facing layer, as stated above. The reference does not specifically recite additional desirable qualities, such as necking.

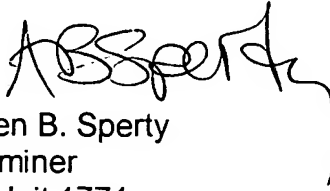
18. The Desai reference also teaches elastic composites for the same intended uses. Desai also recites conventional uses for stretch-bonded and necked-bonded laminates (para. 0005). Providing both stretch bonding and neck bondings, yields a composite that is stretchable in both the machine and cross machine directions, a feature that is desirable in the intended uses recited by the Stopper reference. It would have been obvious to process the nonwoven material of the Stopper reference to provide necking, motivated by the desire for the versatility and comfort afforded by stretchability in both the machine and cross-machine directions.

**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Arden B. Sperty  
Examiner  
Art Unit 1771

February 17, 2006

  
W. G. Ruddock  
Primary Examiner  
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